IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.08.2007

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Writ Petition No.34179 of 2003

1. The State of Tamil Nadu rep.by
its Secretary, CT & RE Departmnet
Fort St.George, Chennai - 600 009

2. The Deputy Commissioner (CT)
Tirunelveli

3. The Deputy Commercial Tax Officer
Ambasamudram, Tirunelveli District Petitioners

v.

1.M/s.Nagalakshmi & Co.,
2-3/18-A, Reddiarpuram Road
Veeravanallur
Tirunelveli District
rep.by its Partner
Mrs.Nagalakshmi Gopal

2.The Registrar
The Tamil Nadu Taxation Special
Tribunal, Chennai - 600 001. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking for the relief of issuance of a writ of certiorari to call for the records on the files of the second respondent pertaining to the order dated 30.4.2003 made in O.P.No.994 of 2002 and quash the same as illegal.

For Petitioners : Mr.Haza Nazirudeen,Spl.G.P.
For Respondents : Mr.B.Bharat Bhooshan (R1)

ORDER

(Order of the Court was delivered by
K.RAVIRAJA PANDIAN, J.)

The writ petition is filed by the revenue seeking for the relief of issuance of writ of certiorari calling for the records on the file of the second respondent i.e., Tamil Nadu Taxation Special Tribunal pertaining to its order dated 30.4.2003 in O.P.No.994 of 2002 and quash the same.

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2. Before the Special Tribunal, the first respondent - dealer filed O.P. seeking for the relief of declaration to declare that sub-section (4) of Section 6 of the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002 (hereinafter referred to as "the 2002 Act") is violative of Article 14 of the Constitution of India and thereby unconstitutional, arbitrary and ultra vires.

3. The above relief was sought for in the following circumstances:

The first respondent is a dealer in hides and skins and assessee on the file of the third petitioner - Deputy Commercial Tax Officer, Ambasamudram, Tirunelveli District. For the assessment year 1998-99, the first respondent was assessed to tax on a total and taxable turnover of Rs.61,96,914/- as against the reported total and taxable turnover of Rs.75,13,485/- and Rs.4,16,676/- respectively by assessment order dated 29.9.2000. The assessment was so made rejecting the assessee's claim of exemption on export sales of dressed hides and skins.

4. Aggrieved by the same, the first respondent preferred a regular appeal before the Appellate Assistant Commissioner, Tirunelveli in Appeal No.694 of 2000 on 19.10.2000. The appeal so filed was pending before the first appellate authority. During the pendency of the appeal, in the year 2002, the State Government enacted an Act "The Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002. The said Act provided for settlement of disputes in terms of the provisions of that Act. The assessee made an application on 23.9.2002 before the Designated authority viz., Deputy Commissioner, Tirunelveli. But even before the application was filed on 23.9.2002 for settlement of dispute, the first respondent/assessee paid the entire disputed amount of Rs.2,29,800/- as well as the penalty levied under Section 12(3)(c) of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "TNGST Act"). Penalty levied under Section 12(3)(b) remained unpaid. According to the assessee/first respondent, as per Sections 6 and 7 of the 2002 Act, the first respondent had to pay a sum of Rs.1,14,900/- towards tax and Rs.31,447/- towards penalty only for settling the dispute. But as per Section 6(4) of the 2002 Act, if the amount paid by the assessee exceeds the amount determined under Section 6, the excess amount paid shall not be refunded.

5. In those circumstances of the case, the assessee filed a Original Petition in O.P.No.994 of 2002 before the second respondent - Tamil Nadu Taxation Special Tribunal seeking for a declaration that sub-section 4 of Section 6 of the 2002 Act is violative of Article 14 of the Constitution of India and thereby unconstitutional. The Special Tribunal by its order dated 30.4.2003 allowed the Original Petition by holding that Section 6(4) of the 2002 Act is violative of Article 14 of the Constitution of India. The correctness of the said order is now put in issue in this writ petition.

6. The Government Pleader has contended that the reasoning of the Special Tribunal that when the amount under Section 6(1) of the 2002 Act has to be determined strictly in accordance with the rates specified under Section 7, it is implied that any amount paid in excess of the

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determination made under Section 7, has to be refunded to the applicant. He further contended that when there is a specific provision under Section 6(4) of the 2002 Act prohibiting the refund of the excess amount, there is no scope for any implication that the excess amount should be refunded to the assessee.

7. However, the learned counsel appearing for the assessee argued for sustaining the order of the Tribunal.

8. We heard the argument of the learned counsel on either side and perused the materials on record.

9. The State Government having regard to the fact that several crores of revenue due to the Government have been locked up in litigation at various stages thought it fit to enact the 2002 Act to provide for expeditious settlement of disputes relating to the disputed arrear of tax, penalty or interest pertaining to TNGST Act, Tamil Nadu Sales Tax (Surcharge) Act, 1971, the Tamil Nadu Additional Sales Tax Act, 1970 and the Central Sales Tax Act, 1956. The said provision provides a hussle free and dispute free settlement to the effect that where the dispute relates to any tax, the assessee could resolve the dispute by paying 50 percent of the tax in dispute. Where the dispute relates to tax and penalty, by making payment of 50 percentum of the tax in dispute and 25 percentum of such 50 percentum of the tax in dispute. Where the dispute relates to any penalty, by making payment at the rate of 15 percent of the penalty in dispute, and where the dispute relates to any interest, by paying at the rate of 25 percent of the interest in dispute.

10. The 2002 Act further provides that the assessee could make an application for settlement as aforesaid in respect of any period for which the assessment has been made under the relevant Act against which an appeal or revision has been filed on or before 28.2.2002 before any appellate authority or revisional authority and pending before such authority at the time of making the application. The application should be made within three months from the date of commencement of the Act or by such later date as the Government by notification specify from time to time. The Act came into force from 26th May 2002. The assessee/first respondent, though paid the tax and the penalty under Section 12(3)(c) in full under the T.N.G.S.T.Act, taking advantage of the pendency of the appeal before the first appellate authority, filed an application under the 2002 Act for settlement. Having filed an application for availing the benefit granted under the Act, however thought it fit to challenge specific provision, which provided that the excess amount paid over and above the determination made under 2002 Act shall not be refunded.

11. The above Act provides for settlement of dispute by giving certain concession so as to settle the dispute once and for all without allowing the dispute to remain and continued to remain in various appellate forum. But for this Act, the assessee has to resolve the dispute before the regular appellate authority and the other hierarchy of the authority as provided in the parent Act viz., TNGST Act. The alternate method of resolution of dispute under the 2002 Act is only

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optional. The provision also restrict the application of the Act only in respect of the assessees, whose appeals or revisions are pending before the statutory authorities under the T.N.G.S.T.Act and the assessees are entitled to file an application under the 2002 Act within three months from the date of commencement of the Act. There is no compulsion on the part of the assessee even when the appeals and revisions are pending during the relevant period, to opt for settlement of dispute. It is wholly within the choice and pleasure of the assessees. If the assessee thinks it is beneficial for him to resolve the dispute under the 2002 Act, then the assessee would be governed by the provisions of the Act. Having voluntarily and with full knowledge of the features of the method of resolution, opted to be governed by it, the assessee cannot be heard to question the validity of the sub-section. The dispute resolution method under the 2002 Act is hussle free, in the sense, there need not be long winding argument as to the applicability of the rate or correctness of the rejection of the exemption claimed or interpretation of the statutory provision. A hussle free method is evolved to the effect that if the fixed percentage of the amount in the appeal, which is required to be pending, is paid, there ends the dispute once and for all for the particular assessment year. The assessee thus save himself from the botheration of keeping the books of accounts and producing before the appellate authority and placing all the forms or declarations under which the assessee claims benefit and filing of appeal. No enquiry of any sort is necessary.

12. The Constitution does not preclude the Legislature from evolving such simplified hussle free method of dispute resolution by making it optional and making available to particular period. It may also be remembered that in the field of taxation, Legislature must be allowed greater play in the joints as it is called. The fiscal Legislation itself as it is clear is a compulsory extraction from the public for the welfare of the State. Allowance must be made for trial and error by the Legislature as has been held in R.K.Garg v. Union of India (1981) 4 SCC 675 to the following effect:

> ".....laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes, J., that the Legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straight jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the Legislature. The court should feel more inclined to give judicial difference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved..... The court must always remember that 'legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by

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abstract symmetry' that exact wisdom and nice adaption of remedy are not always possible and that 'judgment is largely a prophecy based on meagre and uninterpreted experience'. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot, as pointed out by the United States Supreme Court in Secy. of Agriculture v. Central Roig. Refining Co. (1950) 94 L Ed 381, be converted into Tribunals for relief from such crudities and inequities..... If any crudities, inequities or possibilities of abuse come to light, the Legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the Legislature in dealing with complex economic issues."

13. When comparable provisions of sub-sub-sections 7 and 7A of Section 7 of the Kerala General Sales Tax Act, 1963, which provides for compounding rate of tax alternate to the rate of tax payable under the regular charging provision for Civil works contract, was put in issue on similar ground of the present case, the Supreme Court in the case of STATE OF KERALA AND ANOTHER VS. BUILDERS ASSOCIATION OF INDIA AND OTHERS reported in (1997) 104 STC 134 has held that the alternate method of payment of tax is only optional. It is not compulsory on the part of the assessee to opt for the alternate method of taxation. It further held that having voluntarily and with the full knowledge of the features of the alternate method of taxation, opted to be governed by it, a contractor cannot be heard to question the validity of the relevant sub-sections or the rules. The observation made by the Supreme Court in the above said decision would in all fours be applicable to the facts of the present case.

14. While considering the voluntary disclosure of income Scheme 1988, when it was attacked that the provisions of Section 67(2) provided that if the declarant failed to pay tax within a period of three months as specified, the declarant file shall be deemed never to have been made under the Scheme. The Supreme Court rejected the contention by observing that the scheme has conferred the benefit on those, who had not disclosed their income earlier by affording protection against the possible legal consequences of such non-disclosure under the Income-tax Act. Where the assessees seek to claim the benefit under the statutory scheme, they are bound to comply strictly with the condition under which the benefit was granted. There was no scope for the application of any equitable consideration when the statutory provisions of the Scheme were stated in the plain language. The Supreme Court has further held that the Court has no power to act beyond the power of the statutory scheme under which the benefits have been granted to the assessee.

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15. In view of the fore-going reasons, and in the light of the decisions of Supreme Court referred to above, we are of the view that the order of the Tribunal declaring Section 6(4) of 2002 Act as unconstitutional is not correct. The said order of the Tribunal is liable to be set aside and the same is set aside. The writ petition is allowed as prayed for. However, there is no order as to costs. Consequently, the connected W.P.M.P.No.41437 of 2003 is closed.

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sd/-
Asst.Registrar

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Sub Asst.Registrar

To

1.The Registrar
The Tamil Nadu Taxation
Special Tribunal
Chennai - 600 001.

+ 1 cc to Mr.B.Bharat Booshan Advocate SR.NO.53225
+ 1 cc to Spl.Govt.pleader SR.NO.53043

SR(CO)
RD 7.9.07

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